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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 525. 264

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND I. W. SNUGGS, COUNTY TREASURER OF STANLY COUNTY, PETITIONERS,

vs.

W. N. COLER AND COMPANY, RESPONDENTS.

Petition for Writ of Certiorari Requiring the Circuit Court of Appeals for the Fourth Circuit to Certify to the Supreme Court, for its Review and Determination, the Cause of the Board of Commissioners of Stanly County and I. W. Snuggs, County Treasurer, Appellants, vs. W. N. Coler and Company, Appellees.

A. C. AVERY,
JAMES E. SHEPHERD,
Attorneys and Counsel for Petitioners.

(18,438.)

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vs.

W. N. COLER AND COMPANY, RESPONDENTS.

Petition for Writ of Certiorari Requiring the Circuit Court of Appeals for the Fourth Circuit to Certify to the Supreme Court, for its Review and Determination, the Cause of the Board of Commissioners of Stanly County and I. W. Snuggs, County Treasurer, vs. W. N. Coler and Company.

To the Honorable Supreme Court of the United States:

The petition of The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer of Stanly county, respectfully shows:

First. That your petitioners were the appellants and W. N. Coler and Company were appellees in a cause lately pending in the circuit court of appeals for the fourth circuit,

wherein an opinion was filed by said court—Judges Morris and Boyd concurring therein and Judge Goff dissenting—on the 4th day of February, A. D. 1902, in said court, and the decree affirming the judgment of the circuit court for the western district of North Carolina was entered in accordance with said opinion (a certified copy of said record being hereto attached), and that the said cause was held, upon petition to rehear, to await the decision of the Supreme Court of the United States in the cause of Commissioners of Wilkes County and J. H. Johnson, sheriff and *ex officio* treasurer of Wilkes county, appellants, *versus* W. N. Coler and Company, appellees, heard on certificate of the judges of the said circuit court for the fourth circuit at the last term of the Supreme Court. (See opinion, Supreme Court Reporter, volume 21, dated April 21, 1901.)

Second. That the said cause involves a controversy as to the validity of certain county bonds of the denomination of $1,000 each, and amounting in the aggregate face value to one hundred thousand dollars, issued by Stanly county, North Carolina, in the year 1890, and was begun by original bill filed by said W. N. Coler and Company in the circuit court of the western district of North Carolina, at Statesville, and that said circuit court, upon the hearing, entered a decree enjoining the said Board of Commissioners of Stanly County from in any manner interfering with the execution and performance of its decree, and declaring and adjudging that the said bonds are valid, and that I. W. Snuggs, county treasurer of said county of Stanly, was the lawful trustee of the holders of said bonds, and held the sum of six thousand dollars as such trustee, under and by virtue of the

law and orders of the Board of Commissioners of Stanly county, for the benefit of said bondholders and for the sole purpose of paying off and discharging the interest due on said bonds, which he had failed to do, and the said Board of Commissioners of Stanly County and I. W. Snuggs, treasurer, appealed to the circuit court of appeals for the fourth circuit, and, after hearing argument, the said circuit court of appeals, by an opinion delivered by Judge Goff, and in which all the judges concurred, reversed the judgment of said circuit court for the western district of North Carolina and adjudged and declared that the said bonds issued by Stanly county were invalid (see 96 Fed. Reporter, page 284); but that upon the rehearing of the cause upon petition, as aforesaid, the said circuit court of appeals for the fourth circuit, by an opinion and judgment rendered by Judge Morris—Judge Boyd concurring and Judge Goff dissenting—on the fourth day of February, A. D. 1902, overruled the former decision of said circuit court of appeals and affirmed the decision below of said circuit court for the western district of North Carolina, and that your petitioners are advised that so soon as the mandate of the said circuit court of appeals for the fourth circuit shall be sent down in pursuance of said decree, entered in said court in conformity to said opinion, the said circuit court can and will proceed to enforce its said judgment (see copy of decree of said circuit court in the record), since said decree has been affirmed by said circuit court of appeals.

Third. That, as appears from said record (a copy of which is filed herewith), on the 18th day of May, A. D. 1897, an action was instituted in the superior court of Stanly

county by the Board of Commissioners of Stanly County and James P. Nash and G. R. McCain against I. W. Snuggs, treasurer of Stanly county, and that upon the hearing in said superior court of Stanly county it was ordered and adjudged by the court, as also appears in the record, that the said I. W. Snuggs was enjoined and restrained from paying any money in his hands, or that might thereafter come into his hands, as treasurer of Stanly county, in satisfaction of the interest on said bonds, or from making any disposition whatever of such moneys until the final hearing (see order of Judge Coble in the attached record), and that on appeal by said defendant, Snuggs, to the supreme court of the State of North Carolina, the said supreme court affirmed the judgment of said superior court. (See Commissioners of Stanly County *vs.* Snuggs, 121 N. C., 394.)

Fourth. That by reason of the conflict between the said decision of the circuit court of appeals for the fourth circuit and the decision of the supreme court of the State of North Carolina, rendered in the case of The Board of Commissioners of Stanly County *et al. vs.* Snuggs, 121 N. C., 394, wherein it was held by said supreme court that the said bonds issued by Stanly county were invalid, it has become necessary for the Supreme Court of the United States to determine and declare, upon reviewing the said decision of the circuit court of appeals rendered on February 4, A. D. 1902, whether the said decision of the circuit court of appeals for the fourth circuit, and the decree in accordance with said decision, should be affirmed, or whether said circuit court of appeals erred in failing to follow the decision of the supreme court of North Carolina in declaring said bonds invalid

under the construction given by said supreme court to the constitution of said State and its statutes pertaining to the validity of said bonds, and that the necessity for reviewing said conflicting decisions grows out of the fact (Forsyth *vs.* Hammond, 166 U. S., 506, 514, 515) that so soon as the said circuit court of appeals shall send down its mandate (which is now withheld to await this application) the circuit court for the western district of North Carolina will, upon motion of the appellees, the plaintiffs in said suit below, order your petitioner, I. W. Snuggs, treasurer of Stanly county, to pay over to a receiver, or to the holders of said bonds, any moneys in his hands collected as a levy of special tax to pay the interest on said bonds issued by Stanly county, as aforesaid, and any moneys which may hereafter come into his hands collected under any such levy of special tax, and will order your petitioner, The Board of Commissioners of Stanly County, to levy a tax sufficient to pay any interest due on said bonds over and above such amount as may be in the hands of a receiver or of said treasurer, your petitioner, and collected under a levy of taxes made to meet interest on said bonds, whereas the supreme court of North Carolina have affirmed the judgment of Coble, judge of superior court of North Carolina (as appears in the attached record), enjoining and restraining the treasurer of Stanly county, your petitioner, from paying any money now in his hands or that may hereafter come into his hands to any holders of the coupons on said bonds, so that your petitioners would be subject to attachment for contempt by the said circuit court if they should refuse to pay or permit the payment of interest on said bonds, and by the superior court of said State if any special tax fund already collected or hereafter collected

by order of said board of commissioners as a special tax should be applied to the payment of interest on said bonds, but for the fact that the State court may yield to the mandate of said circuit court as issued under the supreme law of the land.

Fifth. That prior to the publication of said decision, on the 4th day of February, A. D. 1902, the said circuit court of appeals had, as aforesaid, delivered an opinion, in which all the members of the court had concurred (see The Board of Commissioners of Stanly Co. *et al.*, appellants, *vs.* W. N. Coler and Company, appellees, 96 Fed. Rep., 284), and had held and decided that sections 1996 to 2000 of the Code of North Carolina did not authorize the issuing of the said bonds by Stanly county, following the construction of said sections given by the supreme court of North Carolina in said action of Commissioners *vs.* Snuggs, 121 N. C., 394, that the said sections of the code did not empower the county of Stanly to issue said bonds in payment of subscription to a railroad company which built a road through a portion of said county, but that the same question having arisen in said circuit court of appeals as to the authority of Wilkes county, North Carolina, under said sections of the code to issue its bonds in payment of its subscription to the capital stock of a railroad company which built a railroad through a portion of Wilkes county, a petition to rehear was filed after the rendition of said decision in said circuit court of appeals, and thereupon the mandate was stayed and the cause was held to await the decision by this honorable court as to the validity of said Wilkes county bonds; that this honorable court declined to decide the question whether the said

sections 1996 to 2000 of the Code of North Carolina empowered either the county of Wilkes or Stanly county to issue bonds, and left the said question open because it was not within the purview of the instruction asked by said circuit court of appeals.

Sixth. That your petitioners therefore respectfully submit that under the rule laid down in Forsyth *vs.* Hammond, *supra*, already referred to, and in the exercise of its plenary power, this court should authoritatively determine and settle the question which has given rise to an unseemly conflict between the courts of the United States of America and the supreme court of North Carolina, and that the facts that the said circuit court of appeals, by the unanimous opinion of the judges upon the first hearing, decided to follow the construction given by the supreme court of North Carolina to sections 1996 to 2000 of the Code of North Carolina, and, upon a rehearing, decided by a bare majority of a court differently constituted to overrule the former decision of said circuit court of appeals, is also worthy of consideration by this honorable court as a reason for exercising its plenary power by reviewing the said decision rendered on the 4th day of February, 1902, which, as aforesaid, held the said bonds valid upon the ground that the supreme court of North Carolina had erred in construing its own statutes.

Wherefore your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States circuit court of appeals of the fourth circuit, commanding said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all

proceedings of said circuit court of appeals in said case therein, entitled The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer, appellants, *versus* W. N. Coler and Company, appellees, No. 290, to the end that the said cause may be reviewed and determined by this court, as provided in section 6 of the act of Congress entitled "An act to establish circuit courts of appeals and to define and to regulate, in certain cases, the jurisdictions of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioners may have such other or further relief or remedy in the premises as to the court may seem appropriate and in conformity with said act and with the recognized principles of law applicable to the matter set forth in the petition, and that the said judgment of the said circuit court of appeals in the said cause and every part thereof be reviewed by this honorable court.

And your petitioners will ever pray.

THE BOARD OF COMMISSIONERS OF
STANLY COUNTY AND
I. W. SNUGGS, *County Treasurer*,
By A. C. AVERY,
Attorney and Counsel for Petitioners.

J. E. SHEPPERD AND
A. C. AVERY,
Of Counsel for Petitioners.

DISTRICT OF COLUMBIA, }
City of Washington. }

Alphonso C. Avery, being duly sworn, says that he is one of the attorneys and counsel for the Board of Commissioners of Stanly County and I. W. Snuggs, treasurer, petitioners above named, and as such has signed the foregoing petition, and as such has had personal charge for them of the suit in equity brought by W. N. Coler and Company in the circuit court for the western district of North Carolina against your said petitioners, while pending in said circuit court, and of the appeal of your petitioners to the circuit court of appeals, from the institution of said suit to the present time, and also appeared in the superior court of Stanly county in the action therein entitled The Board of Commissioners of Stanly County *et al. vs.* I. W. Snuggs, and also when said action was heard upon appeal of I. W. Snuggs in the supreme court of North Carolina, and having more perfect and accurate knowledge of the facts alleged in the petition than the petitioners themselves, and therefore has signed the names of the said petitioners and verifies the same for them; and that the facts therein stated are true, to his best information and belief.

ALPHONSO C. AVERY.

Sworn to and subscribed before me this the 5th day of March, A. D. 1902.

In witness whereof I have hereunto signed my name and affixed the seal of my office.

[SEAL.] JOHN J. WILMARTH,
Notary Public, District of Columbia.

PETITIONER'S BRIEF

Office Supreme Court U. S.
FILED
MAY 5 1902
JAMES H. McKENNEY,
Clerk

No. 585.

Bf. of Shepherd, Avery & C.
for Petitioner

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

Filed May 5, 1902.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND I. W. SNUGGS, COUNTY TREASURER OF STANLY COUNTY, PETITIONERS,

vs.

W. N. COLER & COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

BRIEF FOR PETITIONERS.

JAMES E. SHEPHERD, A. C. AVERY AND C. M. BUSBEE
ATTORNEYS AND COUNSEL FOR PETITIONERS.

FILED ....., A. D. 1902.

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COUNSEL FOR PETITIONERS.

FILED ....., 1902.

This case belongs to one of the classes in which the Court has announced that it will exercise its Plenary Power by granting a Writ of Certiorari to the Circuit Courts of Appeal.

"We reaffirm in this case the propositions heretofore announced, to-wit, that the power of this Court in *certiorari* extends to every case pending in the Circuit Courts of Appeal, and may be exercised at any time during such pendency, provided the case is one which, but for this provision of the statute, would be finally determined in that Court. And further, that while this power is coextensive with all possible necessities and sufficient to secure this Court a final control over the litigation in all the Courts of appeal, it is a power which will be sparingly

exercised, and *only when the circumstances of the case satisfy us that the importance of the question involved the necessity of avoiding conflict between two or more Courts of appeal, or between Courts of appeal and the Courts of a State, or some matter affecting the interest of this Nation in its internal or external relations, demands such exercise.*

"Among the considerations thus suggested are those which *indicate why, in this case, the Court properly exercised its power and issued the writ of certiorari. There was a conflict between the decision of the Circuit Court of Appeals for the Seventh Circuit and the Supreme Court of the State of Indiana.* The latter Court had declared that the proceedings by which the contiguous territory was annexed to the city of Hammond were legal, and, therefore, that that territory was to be considered by all the officers of the State of Indiana as within the territorial limits of the city. The United States Circuit Court of Appeals, by its decision in this case, had declared that such annexation proceedings were invalid, and that the property of the petitioner was not within the city limits. This tract of plaintiff's was not on the extreme limit of lands sought to be incorporated into the city, and if the decision of the Circuit Court of Appeals was enforced, there would be a tract of a few hundred acres within the exterior boundaries of the city of Hammond, as defined by the judgment of the Supreme Court of the State, withdrawn from the city jurisdiction, and, in fact, excepted from its territorial limits. *All the unfortunate possibilities of conflict and collision which might arise from these adverse decisions were suggested when this application for certiorari was made, and, although no final decree had been entered, it seemed to us a duty to bring the case and question here for examination at the earliest possible moment."*

Forsyth v. Hammond, 166 W. S., 506, 514, 515.

It will be seen by reference to pages 25 and 29 of the printed record, that the judgment affirmed by the Supreme Court of North Carolina in Commissioners v. Snuggs, 121 N. C., 394, is in conflict with the judgment of the Circuit Court for the

Western District of North Carolina, affirmed by the decision of the Circuit Court of Appeals for the Fourth Circuit, at Richmond, February 4, 1902 (see printed record, page 62).

Petitioners are advised that it is sufficient, upon the hearing of the preliminary motion, to show that the case referred to in the petition belongs to a class in which the Court has declared its purpose to exercise its plenary power, by reviewing the conflicting decisions, and determining what is the law.

The two Courts whose differences have given rise to this conflict being Courts of last resort, whose decisions, as a rule, must be followed, the petitioners take it for granted that so grave a question will not be considered by the Court, which is the final arbiter, without a full discussion upon the merits, after settling the preliminary motion. They will, therefore, submit a short brief to show that the issues of law raised have, at every stage of their consideration in different Courts, and upon every question involved, given rise to conflicts of opinion between learned and distinguished jurists, and that these differences, according to the settled practice of the Court, will be reviewed only after hearing the counsel for both parties and after due deliberation.

The History of These Conflicts of Opinion and Judgment.

FIRST. The bonds were declared invalid, and the authority of The Code, sections 1996 to 2000, was declared by the Supreme Court of North Carolina insufficient to authorize their issue (but one Justice dissenting), in Commissioners v. Snuggs, 121 N. C., 394.

SECOND. The Circuit Court of Appeals reviewed the opinion of the Circuit Court of the Western District of North Carolina, declaring the bonds valid, and all of the Judges, Goff, Morris and Brawley concurring, reversed the ruling of the Circuit Court and followed that of the Supreme Court of North Carolina.

Commissioners v. Coler, 96 Fed. Rep., 284 (see opinion of the Court, by Judge Goff, page 65 of printed record).

THIRD. Upon petition to rehear filed in the Court of Appeals, the mandate was stayed and the cause was held to await the decision of the Supreme Court in the hearing on certificate of Wilkes County v. Coler, 180 U. S., 506—524, but the Court declined to pass upon the question whether Wilkes County (or Stanly County), was empowered by sections 1996 to 2000 of The Code of North Carolina to issue bonds in aid of railroads extending through their counties.

FOURTH. After it had been held to be the duty of the Circuit Court of Appeals to follow the construction given to Section 14, Article II, of the Constitution by the State Court, the only remaining question is whether the Federal Courts should follow the construction given by the State tribunal to said sections of The Code.

FIFTH. A bare majority, composed of Judges Morris and Boyd, decided to overrule the former decision of the Court of Appeals, while Judge Goff dissented. (See opinion in the printed record, from pages 81 to 102.)

SIXTH. NOT ONLY IS THERE A CONFLICT OF OPINION, BUT THERE IS A CONFLICT OF JUDGMENT, the State Court enjoining the further collection of taxes and the payment of some $6,000 now in the hands of Snuggs, the Treasurer, and the Federal Court declaring the bonds valid and DIRECTING THE SAID TREASURER TO PAY THE SAID SIX THOUSAND DOLLARS TO A RECEIVER FOR THE USE OF THE BONDHOLDERS (pages 25, 29, 62 of printed record).

The established rule of the Federal Courts is to resolve all reasonable doubts in favor of the construction placed by the State tribunals upon their own statutes.

The construction by the Courts of a State of its Constitution and statutes is, as a general rule, binding on the Federal Courts. We may think that the Supreme Court of a State has misconstrued its Constitution or its statutes, but we are not at liberty to, therefore, set aside its judgments. That Court is the final arbiter as to such questions. In Claiborne County v. Brooks, 111 U. S., 400, 410 (28, 470, 474), it was said: "It is un-

doubtedly a question of local policy with each State, what shall be the extent and character of the powers which its various political and municipal organizations shall possess; and the settled decisions of its highest Courts on this subject will be regarded as authoritative by the Courts of the United States; for it is a question that relates to the internal constitution of the body politic of the State." See also Burgess v. Seligman, 107 U. S., 20, 33 (27: 359, 365); Bucher v. Cheshire R. Co., 125 U. S., 555 (31: 795); Detroit v. Osborne, 135 U. S., 492 (34: 260); South Branch Lumber Co. v. Ott, 142 U. S., 622 (35: 1136); Kaukauna Waterpower Co. v. Green Bay and M. Canal Co., 142 U. S., 254 (35: 1004); McElvaine v. Brush, 142 U. S., 155 (35: 971); Stutsman County v. Wallace, 142 U. S., 293 (35: 1018), quoting Norton v. Shelby County, 118 U. S. 425 (30: 178), and Grumley v. Clark, 134 U. S., 338 (33: 909); Morley v. Lake Shore and M. S. R. Co., 146 U. S., 162 (36: 925); Bauserman v. Blunt, 147 U. S., 647 (37: 316); May v. Tenney, 148 U. S., 60 (37: 368); Baltimore and O. R. R. Co. v. Baugh, 149 U. S., 368, 373 (37: 772, 776); Lewis v. Monson, 151 U. S., 545 (38: 265); Balkam v. Woodstock Iron Co., 154 U. S., 177 (38: 953), quoting Leffingwell v. Warren, 67 U. S., 2 Black., 599, 603 (17: 261, 262).

When it is found that no construction had been given to a statute by the State Court, when the transaction was entered into, the "Federal Courts will lean toward an agreement of views with the State Courts, if the question seems to them balanced with doubt."

Burgess v. Seligman, 107 U. S., 20, 33.

It is true that all Courts incline to hold commercial paper, in the hands of innocent purchasers for value, valid, but nowhere, except in the concurring opinion of Judge Boyd and in the brief of Mr. Price, have we found an intimation that, in order to uphold municipal bonds, "if it can do so under any circumstances," or "if it is possible to do so," a Federal Court must lean against instead of in favor of a ruling by a State tribunal, that the creation of a debt by a municipality was *ultra vires*.

Justice Gray, in Louisville R. Co. v. Louisville Trust Co., 174 U. S., 573, 574, said, quoting 10 Wall., 604:

"Where a party deals with a corporation in good faith—*the transaction is not ultra vires*—and he is *unaware of any defect in authority*, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists."

The contention of Petitioners is that the authority to subscribe was limited to a certain class of counties. If a county was not a donee of such power, by reason of belonging to such class, it could not confer such authority on itself by recitations, either in bonds or in the minutes of its governing officials.

If the Legislature had not intended to restrict the power of "the Boards of Commissioners of the several counties" to aid railroads to those in which the citizens of the county may have an interest, "it would have omitted the qualifying clause, and have allowed any county to subscribe stock to any railroad company or companies."

If the clause descriptive of the company to which the subscription might be made is not meaningless and mere surplusage, it confers power only on a certain class of counties. *If a county not authorized attempts to subscribe, it is acting ultra vires.* Whether there is anything in the transaction to excite suspicion or not, a purchaser is bound to look to the power of a municipality to issue bonds and must lose when the bonds are issued without legislative authority. This proposition, of course, does not require the citation of authority.

The language of Code, section 1996, relied upon as authority for the issue of the bonds, is as follows: *"The Boards of Commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens may have an interest."*

What is meant by the words, "any railroad in which the citizens of a county may have an interest?" The petitioners submit that the Courts of America and the British Empire have uniformly construed the word "interest" in such connection to mean "pecuniary interest" in the thing referred to, here in the railroad.

Definition of the words, "Interest" or "Interested."

In construing a statute prohibiting any member of a counsel from having a direct or indirect interest in a contract of the corporation, the Supreme Court of Michigan, in Swedly v. Kirby, 79 N. W. R., 188, said: "This indicates that a pecuniary interest was intended. Anderson defines interest as such relation to the matter in issue as creates a liability to pecuniary loss or gain from the event of a suit."

Taylor v. Highway Commissioners, 88 Ill., 527.
Northampton v. Smith, 11 Met. (Mass.), 395.

In a case where the question was whether a salaried employee of a firm of contractors was interested in the contracts of the firm, the Pennsylvania Court said: "The word interested does not mean anything but pecuniary interest, and of this there is no evidence."

Dunlap v. Philadelphia, 13 W. N. C. (Pa.), 98.

The Supreme Court of Illinois, in passing upon the question whether the State had an interest, within the meaning of a statute, in a *quo warranto* proceeding to try title to an office, said: "The interest which a State must have in such a cause is *a substantial interest, as a pecuniary interest.*"

McGrath v. People, 100 Ill., 464.

In State v. R. Co., 36 N. J. L., 164, the Court, drawing the distinction between estates and interests in a statute providing for condemnation of right-of-way, said: "Under the more comprehensive term, 'persons interested,' are included, not only persons in whom is vested the legal title which the company pro-

poses to acquire, * * * but also other individuals having some independent right or interest therein, * * * such as an easement of a right-of-way, inchoate rights of dower or curtesy, or incumbrances, such as by judgments or mortgages, which are charges on the legal estate. The object is * * * that their *interest* may be extinguished by payment."

The Supreme Court of California, construing a statute allowing a party *"beneficially interested"* a writ of review of an order of the Board of Supervisors granting a right to use a highway for the purpose of constructing a railroad, held that an affidavit alleging that "affiant, in common with others living along the highway, would be damaged," was insufficient, and said: "It does not appear by the petition in this case that *the petitioner has any other or greater right in the highway mentioned therein than any other citizen of the State.* * * * In an application made by a private party, *his interest must be of a nature distinguishable from that of the mass of the community.*"

Linden v. Almeda County, 45 Cal., 7.
Ashe v. Calusa County, 71 Cal., 236.

If a person living on a highway has *"no other or greater interest therein than any other citizen of the State," then a person living on or in the vicinity of an improved highway—a railroad—has no other or greater interest in the railroad* than any other citizen of the State, and the citizens of Stanly County, whether they live along or away from the line of railway, *"have no other or further interest therein than any other citizen of the State."*

THE LEGISLATURE OF NORTH CAROLINA INTENDED TO EMPOWER ONLY THOSE COUNTIES WHICH HAD ALREADY INVESTED IN THE STOCK OF A RAILROAD COMPANY, BUT HAD NOT THEREBY EFFECTED THE COMPLETION OF THE LINE, TO MAKE AN ADDITIONAL SUBSCRIPTION TO THE STOCK.

FIRST. Because any other construction would have allowed a subscription to be made by any county in the State,

because the citizens of Stanly County, by reason of vicinage, had *no other or greater interest "in the railroad than any other citizen of the State."*

SECOND. According to all rules of construction, it must be assumed that the Legislature intended to describe a class of counties and limit the power to them.

THIRD. Because it is an historical fact, alluded to in Galloway v. Chatham, 63 N. C., 147, that counties as well as the State had been lending their credit and subscribing to the stock of railroad companies, and that Sec. 14, Art. II, and Sec. 7, Art. VII, of the Constitution of 1868, had been inserted in that instrument to restrain counties from reckless expenditures of this kind, just as Sec. 4, Art. VI, had been framed as a check upon extravagant legislation by the State (see 63 N. C., page 147).

FOURTH. Because sections 1996 to 2000 of The Code were first enacted by the reconstruction Legislature of 1868, which attempted to shape the statutory law so as to bring it into harmony with the Constitution, and it is in harmony with the general policy of the State to construe the restrictive clause of section 1996 as confining the authority to subscribe to counties already interested pecuniarily in the railroad to which they propose to subscribe, just as the Legislature, in order to protect investments already made by the State, was empowered to subscribe to railroads in which the State had already made investments.

FIFTH. Because section 3766 of The Code (enacted in 1868) provides that where statutes are re-enacted, "the portions not altered are to be considered as having been the law since their enactment; and at the time of their enactment." As is shown by the judicial history of the State, many counties, like Rutherford, had issued bonds in payment of subscriptions to the stock of railroad companies before the railroad was built across their borders (Hendricks v. Railroad, 101 N. C., 617), and it was the interest of such counties, as it was the policy of the State, to have power to protect such investments.

Additional Authorities Construing "Interest" as Meaning a

Pecuniary, Valuable or Beneficial Interest, Not Merely a Patriotic or Sentimental Interest, Which a Citizen of a State or County Feels in a Public Improvement.

As shareholders, by reason of a subscription already made, the citizens of the county would have had an interest in any contract from which, as shareholders, they might derive profit, as by making an incomplete road more valuable by extension.

Todd v. Robinson, Q. B. D., 739.
Hunnings v. Williamson, 112 Q. B. D., 536.

"Beneficial Interest" was Construed to Mean Present, Vested or Valuable Interest by the Supreme Court of Massachusetts.

Dexter v. Cotting, 149 Mass., 92.

Interest in an Estate or Action, where Requisite to Give a Person Standing in Court as a Party to an Action, Universally Construed to be a Beneficial, Valuable, Vested or Pecuniary Interest.

Bachman v. Packard, Q. Fed. Cas., No. 709.
Northampton v. Smith, 11 Met. (Mass.), 395.
Goodall v. Tuttle, 10 Fed. Cas., No. 5533.
Whitney v. Brittain, 16 N. Y. App. Div., 457.
Hovin v. Valcano, etc., Co., 13 Ca., 62.
Bugher v. Gott, 3 N. Y. Supp., 518.
Whitney v. Barley, Q. B. D., 154.
Burgess v. Clark, 14 Q. B. D., 735.
Gasquet v. Johnson, 1 La., 431.

The Interest Which Disqualifies a Judge from Sitting, is Held to be "a Property Interest" in the Action and its Results, Not "The Interest Which he May Have in Common with Other Citizens in a Public Matter."

Sauls v. Freeman, 24 Fla., 209.
Chicago, etc., R. Co., v. Kellogg.

The foregoing list of authorities might be enlarged by adding scores of cases in which the word interest is interpreted in the

same way; but it is not deemed necessary to cite any but the following:

Taylor v. Norment, 88 Ill., 327.
Wilson v. Railroad, 67 Ala., 358, 360.
In Real Estate of White, 37 Cal., 100.
Shelton v. Derby, 27 Conn., 415, 421, 425.
Smith v. Phillips, 62 Ala., 578.

"Interest," defined in dictionaries, where it relates to property such as railroads, is generally a legal concern of a person in a thing, or in the conduct of another person, whether it consist in the right of enjoyment of or benefit from property, or right to claim an advantage, or be subjected to liability on account of the conduct or management of property.

In other words, an interest is either a legal right in a thing, as property, or such a relation to it as to enable one to participate in the profits of its conduct or management, or share in the loss arising from its management.

One of the definitions given by the Standard Dictionary of *"interested"* is *"being a part-owner; as one interested in railroad shares."*

It is contended for the petitioners that the citizens of a county, collectively, could only be interested, in the ordinary and obvious meaning of the word as applied to railroads, where the corporation, which embodied all rights of the citizens as a body, has some interest in shares of its stock. This definition is in harmony with the contention of the petitioners that the last clause of section 1996 is surplusage, unless it restricts the power to subscribe to roads in which the county may already own shares of stock.

The definitions of lexicons and law-books uniformly define an interest in any kind of property in the same way. If the word has no technical meaning, then it must be interpreted according to its ordinary meaning. If the Courts have given it a technical meaning, that must be adopted.

Adams v. Turrentine, 30 N. C., 147.
Blue v. McDuffie, 44 N. C., 13.
Randall v. Railroad, 107 N. C., 748, 750.

Whatever rule of construction may be followed the interpretation must be the same, and, seeing this, on the first hearing, Judge Goff incorporated into the opinion the entire discussion of this point by the Supreme Court of North Carolina in Commissioners v. Snuggs, expressing briefly the approval of the Court.

On the other hand, in the opinion delivered on February 4, 1902 (printed record, page 81), the Court assumes that the Legislature did not mean "interest" in the sense of "pecuniary interest," because the qualifying word was inserted in the Constitution, but was omitted from the statute. The Court said the words "in which a citizen of a county may have an interest," would seem to be the appropriate words to express the general interest which the whole body of the people of a county have in a railroad which they believe will benefit them, as distinguished from the direct pecuniary interest of the county as a corporation."

This opinion is remarkable, in that it disposes of the ruling of a State Court with so little ceremony, and in that in overruling the construction given by that Court to its own statute, it substituted its own interpretation, without citing an authority, lexicon or law-book to sustain its view. Indeed, no reason is given for rejecting the definition of the Court, though it would seem that the consensus of opinion in all Courts has been that when applied to property an interest means a pecuniary interest.

Was it not most reasonable that the Supreme Court of North Carolina should adopt the definition given both by law-books and dictionaries, and should have added that such an interpretation of a statute enacted by the reconstruction Legislature was in harmony with the policy of the reconstruction Constitution? Of this, that Court, having knowledge of the peculiar conditions in the State and its policies as indicated by its various laws and their interpretation, was certainly more competent to judge.

Judge Boyd, in the concurring opinion, declares it to be both the right and duty of the Court of Appeals to "construe the language of sections 1996-2000 according to their natural and proper meaning"; but he fails to refer to law-book or lexicons

from which the Court gathered the "natural and proper meaning."

We challenge the respondents to produce authority of Courts or scholars for such a definition of interest as applied to a railroad.

The statute requires the subscription must be "necessary to aid in the completion of any railroad," etc.

The petitioners respectfully insist that the word "COMPLETION" has also a most material bearing upon the question of legislative authority, that is, in indicating the *class of counties* to which the act refers.

Judge Goff, in delivering the unanimous opinion of the Circuit Court of Appeals (page 69 of printed record), quotes with entire approbation the following from the opinion of the Supreme Court of North Carolina:

> "But did the sections above mentioned give additional and complete authorty to order the election, issue the bonds and levy the taxes to pay them, principal and interest? Section 1996 is in these words: 'The Boards of Commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad, in which the citizens of the county may have an interest.' It will be necessary, in order that that section may be construed to give authority to the Commissioners to issue the bonds, that the language should include a railroad not begun to be built before the Constitution was adopted; that the word 'completion' should be construed 'building' or 'construction,' extending even to the building of a new road; for, in the case before us, it appears that the road had not begun to be built. We can not see why the word 'completion' should be thought to have been used by the legislators in any other sense than the one most usual and natural. Ordinarily the words 'to complete' are understood to mean 'to finish,' 'to 'fulfill,' and the word 'completion' to mean the 'finishing' or 'accomplishing in full' of something which has already been commenced; as, for instance, it is most frequent to hear the word 'completion' used in

> connection with the finishing years and months of the education of the young. * * * The object of the statute must have been to provide, by general act, means by which the counties, without special legislation for each county by separate bills, might be enabled to complete unfinished railroads in which the counties had a pecuniary interest. At the time of the enactment of the statute of 1868-'69, and always since that time, any county of the State, duly observing the limitations of Section 7 of Article VII of the Constitution, and under an act passed according to the requirements of Sec. 14, Art. II, of the Constitution, could, and can, subscribe to the capital stock of a railroad company, whether unfinished or to be begun. The act of 1868-'69, however, considering the conditon of affairs then existing—that is, that there were counties which had a pecuniary interest in the railroads that had been begun, but were unfinished—enabled such counties to make subscriptions of bonds to complete such unfinished roads at the earliest moment and with the least cost, by a general law passed according to section 14, Article II, of the Constitution."

The learned Judge then cited several other cases from North Carolina, in which the said statute was likewise construed, and remarked: "With these decisions of the Supreme Court of North Carolina, we are in full accord."

We have already discussed the meaning of the word "interest" in the said statute, and will now add a few words in addition to the opinion as to the word "completion." We are told in one of the opinions reversing the former holding of the Circuit Court of Appeals, that "completion" may probably mean "the completion of the raising of money necessary to build the road." And this in view of the historical conditions set forth in the opinion of the Supreme Court of North Carolina, and the legislation dealing with those conditions, and the judicially declared policy of the State in reference to those conditions as reflected by such and other legislation. All of these considerations, involving the legislative and judicial history of a State incident to the peculiar and abnormal conditions resulting from a great civil war, and which the State judiciary could best un-

derstand, and did understand, are thus summarily disposed of by a bare majority, reversing several decisions of the Supreme Court of North Carolina and the unanimous decision of the Circuit Court of Appeals.

Again, in the concurring opinion (page 100 of the record), we are told that the meaning of the word as understood and declared by all of these other Judges "is too narrow, too refined," that "it is used synonymous with 'construction,'" and that it is not the "ordinary meaning," or the "natural meaning," of the language. No authority is referred to except the remarks of Justice Brewer in Provident Trust Co. v. Mercer Co., 170 U. S., 602, in which he very aptly and elegantly illustrates the general proposition that the meaning of a word "is often qualified by the context."

There is nothing in this statute which at all qualifies the ordinary meaning of this word, but there is everything, in view of the dealing of the State with unfinished railroads at the time of its original enactment, to confine it precisely to *its "natural" and well-known meaning.*

The following definitions are referred to:

COMPLETE: (*v. t.*) finish; perfect; fill up or out; *to add or supply what is lacking to;* as to: complete a house or task; to *complete* an *unfinished* design; to complete another's thought.

COMPLETION: (*n*) the act of completing; a *filling out;* as: the completion of a building; the completion of one's *education.* —*Century Dictionary.*

"*Other* larger views than seem necessary to the completion of the argument."—*Bishop Hurd's Sermon.*

"A *slow developed* strength awaits
Completion in a painful school."
—Tennyson's Love Thou Thy Land.

Roget's Thesaurus of English Works and Phrases, treating this word (completion) under the caption of "*Results* of Voluntary Action," thus defines it:

"Section 729--COMPLETION: Consummation; culmination; *final, last*, crowning, *finishing* touch or stroke; coup de grace; crowning of the edifice; fait accompli; *elaboration*.

"COMPLETE is to make complete. We *complete* what *is undertaken by continuing* to labor at it; to finish what is *begun* (in a state of forwardness) by putting the last hand to it. * * * The characteristic idea of *completing* is the conducting of a thing to its final period."

To the same effect is Soule's synonyms, which also define the word "CONSTRUCT" as follows:

(1) Fabricate, build, erect, raise, set up, put together.

(2) Organize, institute, originate, invent, arrange, make, form, frame.

It is submitted that this can not be "synonymous" with "completion," as suggested in the opinion.

Again, it is a well-settled principle that Courts must give effect to every part of a statute. Now, if this be so, how is it possible to reject the meaning that has been given to the words "interest" and "completion" by the Supreme Court of the State and the Circuit Court of Appeals in the opinion delivered by Judge Goff? These words are really the *essence* of the statute: otherwise all counties whose citizens happen to desire a railroad can subscribe to one simply upon the acquisition of a charter; and this, too, even though the road may be in a distant county. The persons concerned in having these bonds issued did not themselves believe in any such interpretation of the law, as they applied to the Legislature for a special act to give the county such authority. It has ever been, and is now well understood in North Carolina, that in order to authorize a subscription to a railroad, *a special act of the Legislature must be obtained*. No one has ever relied upon section 1996 as conferring such authority upon a road whose construction has never been commenced. Indeed, it is doubtful whether *any* subscriptions whatever have *ever* been made under the said act.

UNDER THE ABOVE CONSTRUCTION, THE BONDS ARE INVALID EVEN HAD THE COURT DECIDED THAT THE ACT WAS NOT CONFINED TO ROADS COMMENCED BEFORE 1868, THE DATE OF ITS PASSAGE, as it is admitted, and it appears from the order of the Board of Commissioners *referred to in the recital,* that the construction of the road had *not been commenced* (pages 19, 20 of printed record); and it also appears as a fact in the case that the county had no pecuniary interest whatever in the said road.

But we insist that the construction of the Court that the act referred only to roads commenced and unfinished in 1868, is correct, and is fully sustained by the opinions of the Supreme Court of the State and Circuit Court of Appeals. As we have said, it has never been invoked in aid of any road commenced after that date, if, indeed, it has ever in any case been relied upon. Again, the recital refers to the act amendatory of the charter, which shows that the *charter* was not granted until 1870.

In view of the lack of authority to support a construction which practically nullifies a statute, it is not surprising that the opinions should resort to the doctrine of estoppel in order to uphold these bonds.

The recitals in the bonds work no estoppel as against the county.

Judge Morris submits the question whether the county is not estopped by the recitals in the bonds, and answers: "It seems to us that many cases have so held," citing, with other cases, Belo v. Commissioners, 76 N. C., 489, 493, to sustain that view. On page 493, 76 N. C. R., to which he refers, the Court said: "Where bonds have been issued and sold in the market, and have come into the hands of a *bona fide* holder, before maturity, as a general rule, such bonds are *prima facie* valid, and the onus is upon the party impeaching them to show

the contrary. This rule, however, which subsists between individuals, is much modified in respect to CORPORATE BONDS. SUCH BONDS CAN BE ISSUED ONLY IN PURSUANCE OF A SPECIAL GRANT OF POWER, AND THE PARTY CLAIMING THE BENEFIT OF SUCH BONDS MUST SHOW A POWER IN THE CORPORATE BODY TO ISSUE THEM. * * * IT IS NOT DISPUTED THAT THE POWER TO MAKE THE SUBSCRIPTION OF STOCK AND ISSUE THE BONDS WAS CONFERRED UPON THE COUNTY OF FORSYTH."

The sharp distinction is that WE DO DENY THE POWER of Stanly County to issue these bonds. Taking up the burden, the respondents having already failed to show authority in the charter, now say, in effect, that though Stanly County may not have been one of the class of counties upon which the Legislature conferred the power, yet the corporation, by USURPING THE AUTHORITY AND ASSERTING IN ITS RECITALS AND IN ITS LOCAL LEGISLATION that it had the power, has *indirectly* clothed itself with the power, as if the Courts would lend their sanction to the acquisition of such authority by recitals, in default of a leglislative grant.

In Gunnison County v. Rollins, 173 U. S., 255, 265, the Court said: "THE QUESTION OF LEGISLATIVE AUTHORITY IN A MUNICIPAL CORPORATION TO ISSUE BONDS IN AID OF A RAILROAD COMPANY, CAN NOT BE CONCLUDED BY MERE RECITALS; but, the power existing, the municipality *may be estopped by recitals to prove irregularities in the exercise of that power,* or where the law prescribes conditions upon the exercise of the power granted depends, and *commits to the officers of such municipality the determination of the question whether those conditions have been performed, the corporation will also be estopped by recitals which import such performance.*"

Northern Bank v. Porter Township, 110 U. S., 608, 616, 619.

"The estoppel does not arise except upon matters of fact, which the corporate officers had authority by law to determine and to certify."

Dixon County v. Field, 111 U. S.,, 83, 92, 94.
Gunnison County v. Rollins, *supra.*

"No recital will create or dispense with the requisite authority to issue the bond."

1 Randolph Commercial Paper, Sec. 345a.

"Otherwise, it would always be in the power of a municipal body, to which power is denied, to usurp the forbidden authority by declaring that its assumption was within the law."

Dixon Co. v. Field, *supra.*

The rule, as settled by the latest authority, seems to be that where the law authorizes the municipal authorities to determine whether a condition precedent to subscribing and issuing bonds has been complied with, or when the data for determining whether it has been complied with are peculiarly within the knowledge or possession of such authorities, as to such conditions the recitals in bonds issued are conclusive.

Gunnison Co. v. Rollins, 173 U. S., 255.

On the other hand, the burden is on the holder of a municipal bond to show a legislative grant of the power to issue the bonds, and he can not relieve himself by showing that the municipality has falsely represented that it had been clothed with power. *The question here is whether the respondents have shown Stanly County to be n the category of counties which had an interest in the Yadkin Valley Railroad, and that it was an incomplete road.*

AGAIN, NEITHER THE QUESTION WHETHER STANLY COUNTY HAD AN INTEREST, NOR WHETHER THE ROAD WAS COMPLETE, WAS WITHIN THE PECULIAR KNOWLEDGE OF THE COMMISSIONERS OF STANLY COUNTY, NOR WERE THEY CUSTODIANS OF A RECORD BY WHICH ALONE THAT QUESTION COULD BE DETERMINED, AS IN THE

CASE WHERE THE CONSTITUTION OR LAW PRESCRIBED A LIMIT AS TO THE AMOUNT OF INDEBTEDNESS, AND THE COUNTY AUTHORITIES ONLY HAVE THE DATA FOR ASCERTAINING THE OUTSTANDING INDEBTEDNESS.

Gunnison County v. Rollins, *supra.*

The Respondents are Deemed to Have Notice of the Fact That the Railroad had Never Been Begun, and was not Such a Road as the Supreme Court of the State had Defined to be an Unfinished or Incomplete Road, or one in Which the County was interested.

Galloway v. Chatham Railroad 63 N. C., 149.

The preliminary question, whether the railroad was incomplete, or the county had an interest, was not one as to which the Commissioners had peculiar knowledge, qualifying them to answer. They had such knowledge as the whole public could obtain—nothing more. It was incumbent on the respondents to inquire about the fact, because the incompleteness or completeness, or the interest of the county, was a test of the existence of the power of the Board, not a condition precedent to the exercise of a power granted.

In 2 Dillon on Municipal Corporations, Sec. 542, it is said: "And the purchaser must also notice the provisions and extent of the legislative enactments on the subject. Thus, where authority was given to certain counties lying *north* of the Missouri River, a subscription made and bonds issued under such authority by a county *south* of the river are void in the hands of everybody." This is sustained by a decision of Judge Dillon, speaking for the Court in Lafayette Co. v. Sherard, 3 Dillon C. C. R., 236.

In Marsh v. Fulton, 77 U. S., 676, it is said: "The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder. * * * And this applies to every person who takes the paper afterwards; for it is to be kept in mind that the protection which commercial usage throws around negotiable paper can not be to establish the authority by

which it was originated. * * * That would be equivalent to saying that an agent not having the power to do a particular act for his principal, could give validity to such act by indirect recognition." To the same effect is

Oakland v. Skinner, 94 U. S., 429.
McClure v. Oxford, 94 U. S., 255.
S. Ottawa v. Perkins, 94 U. S., 261.
Hays v. Holly Springs, 114 U. S., 120.
Ogden v. Davies Co., 102 U. S., 634.
Buchanan v. Litchfield, 102 U. S., 278.
Purdy v. Lansing, 128 U. S., 557.

In McClure's case, *supra*, it is said that "every dealer in municipal bonds which, upon their face, refer to the statute under which they were issued, is bound to take notice of the statute and all of its requirements." He is, we say, bound to inform himself in all cases as to the power, and in this case it was his duty to have ascertained whether the county of Stanly was one of those counties which was endowed with the power. The recital of the statute here is all the stronger reason why the purchaser should have made the inquiry.

In Hays v. Holly Springs, *supra*, the Court said: "Every *bona fide* holder of a municipal bond is bound to show legislative authority in the issuing body to create the bond. Recitals on the face of the bond, or acts *in pais*, operating by way of estoppel, may cure irregularities in the execution of a statutory power, but they can not create it."

In Buchanan v. Litchfield, *supra*, the recital was similar to ours in that it stated that it was issued "under authority" of a certain act, etc., and as here there was no recital of the "*circumstances*" which permitted the issue of the bonds.

The Court, after denying the estoppel, said:

> "Any different conclusion from that indicated would extend the doctrine of this Court upon the subject of municipal bonds farther than would be consistent with reason and sound policy, and farther than we are now willing to go. The present action can not be maintained unless we should hold that the

> *mere fact* that the bonds were issued, without any recitals of the circumstances bringing them within the limit fixed by the Constitution, was, in itself, conclusive proof, in favor of a *bona fide* holder, that the circumstances existed which authorized them to be issued. We can not so hold."

It is to be noted that the case of Aspinwall v. Knox Co., 21 How., 539, cited in the opinions in the case at bar, was also discussed in the case just quoted from, and the applicability of the doctrine of recitals as applied to cases like that under consideration denied.

The foregoing principles are in accord with the doctrine of Coloma v. Eaves, 92 U. S., 484, and approved in Gunnison County v. Rollins, *supra*.

We deny, therefore, that any recitals on the part of the Commissioners of Stanly County would estop them to deny the want of legislative power, because, as we have argued, the question here is not the determination of a condition precedent or the proper exercise of duties under an admitted power, *but the very existence of the power itself*.

But even if this were not so, and if section 1996 could be fairly construed, as expressly or by implication, authorizing the Commissioners of each county to judicially determine whether any given road was an unfinished road, and whether the county had such an interest in such road as was contemplated by the Legislature, still the recital in this case that the bonds were issued under authority of the statute is insufficient to work an estoppel. But the recital, to be conclusive, even under that view of the law, must have been in this case to the effect that the bonds were issued to aid in the completion of the Yadkin ~~Valley~~ Railroad, were "necessary to aid in the completion" of that railroad, and that "the citizens" of Stanly County had an interest in said railroad, at the time contemplated by the Legislature in passing the act of 1869. (Orleans v. Platt, 99 U. S., 676; Gunnison Co. Commissioners v. Rollins, 173 U. S., 264, 266, 267.)

Attention is called to the fact that the case of the Town of Coloma v. Eaves, 92 U. S., 484, which is cited as authority in

the last brief of the appellees, is also cited by Justice Harlan in Gunnison Co. Commissioners v. Rollins, *supra,* on pages 263 and 264, as authority for the position that recitals, in order to work an estoppel, must not only be as to facts which the corporate officials are empowered by the statute to determine, but must contain the specific statement, not that they are issued by the authority of a certain statute or constitutional provision, but that the requirements were met by a finding of the specific facts, which such constituted authorities were empowered to determine.

We respectfully submit—

(1) That a proper construction of the act will put this case beyond the power of recitals, as the act did not apply to Stanly County.

(2) That this is not a case where the facts were in the peculiar knowledge of the county authorities, or where they were charged with the duty of determining such facts. Such a view would permit a usurpation of power by a false recital.

(3) That if recitals could in any way affect this case, they were wholly insufficient under the authorities we have cited. Since they recite no circumstances upon which the power could be based.

(4) That in this case the purchaser was bound to inquire into the facts necessary to determine the counties to which the statute applied.

(5) That if he can rely upon recitals, he is affected by them also, in that the *order* recited will show that this was a road whose construction had not been commenced when the order was made, and that the proposition was not based upon present, but upon prospective conditions only.

The bonds themselves also recite that this road was not even chartered until 1870, the act, according to the Supreme Court of North Carolina and the Circuit Court of Appeals, applying only to roads begun prior to 1868.

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